Amathevelli a/p R Ramasamy v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO N-05–30 OF 2003
MOHD GHAZALI, RAUS SHARIF, AND HELILIAH JJCA
16 MAY 2008

Criminal Law — Penal Code — s 302 — Murder — Appeal against conviction and sentence — Whether delay in providing written judgment had caused accused prejudice — Whether conviction unsafe and should be set aside

Evidence — Admissions — Voluntariness — Admissibility of information leading to discovery of stolen property — Whether prosecution has duty to establish voluntariness of such information — Evidence Act 1950 s 27

Evidence — Circumstantial evidence — Nature of — Whether pointed to accused as perpetrator of murder as well as robbery

Evidence — Credibility — Discrepancies in evidence — Whether discrepancies in accused's evidence had been explained away

On 17 May 1998, at about 10am the body of one Soosaimmah a/p Arokiasamy (the deceased) was discovered by the deceased's husband on the floor of their sundry shop near the cashier counter. It was also discovered that RM500–RM600 kept in the cashier counter of the shop was missing together with a gold chain that the deceased was wearing on the morning before her death. The deceased's husband immediately called the police to inform them of the robbery and murder. The investigating officer who arrived at the scene of the crime recovered an empty formic acid bottle and a blood stained knife nearby. Upon examination of the body, which was covered in blood and smelled of acid, he found a slash wound at its neck. The forensic pathologist who conducted a post-mortem of the deceased's body testified that the knife recovered at the scene of the crime could have caused the injury. In addition he attributed the scalding on the body to be the result of the deceased coming into contact with acid from the front direction. On 18 May 1988 at about 12.45am the accused was arrested at her house. The police found scalding marks on the accused's left arm and on the lower part of her lips. The doctor who examined the accused was of the opinion that the injuries found on the accused were as the result of coming into contact with acid and that the

injuries were one or two days old. While in custody the accused gave certain information and led the police to the recovery of the gold chain that was later identified by the deceased's husband as belonging to the deceased. The cupboard in which the gold chain was kept was opened by the accused using a key, which she wore on a chain around her neck. The accused and her husband who are both rubber tappers usually go to work together in separate motorcycles but on the day in question, although he left the house at the usual time the accused arrived at work an hour or an hour and a half later on her own motorcycle. She tapped for a while and left early complaining that she was feeling unwell. At the end of the prosecution's case the trial judge held that the prosecution had proved a prima facie case against the accused and called upon the accused to enter her defence. The accused, who was the only witness for the defence, denied murdering the deceased and denied informing the police that the gold chain belonging to the deceased, was in her possession. The trial judge found that the accused's version had not raised any reasonable doubt against the prosecution's case. The accused was convicted and the mandatory death sentence was imposed on her. This is the appellant's appeal against that decision. In her appeal the appellant has raised three main grounds of appeal. The first ground of appeal was that the delay on the part of the judge in providing his written judgment had caused the accused prejudice. Secondly, the appellant submitted that the trial judge had erred in accepting the evidence of recovery of the jewellery purportedly belonging to the deceased under s 27 of the Evidence Act 1950 ('the Act'). Finally the accused contended that her conviction was unsafe and should be set aside, having regard to the totality of the evidence. The deputy public prosecutor submitted that the delay per se in supplying the written judgment did not automatically render the decision of the trial judge to be vitiated or set aside.

Held, dismissing the appeal and affirming the conviction and sentence:

(1) Although it took the learned trial judge about five years to supply the grounds of judgment to the accused this should not necessarily result in vitiating the whole proceedings. Further the accused had not provided any evidence of the prejudice suffered by her as a result of the delay in supplying the grounds of judgment. In any case, in the administration of justice, the courts are required to be fair both to the accused person and to the state and society. Thus, in the instant case where the accused has been found guilty of a serious crime of murder, it would not be fair to the state and society, if the accused was given an outright acquittal just because of the delay in supplying the grounds of judgment (see para 17).

(2) The authorities have clearly established that under s 27 of the Act, which governs the admissibility of any information leading to the

discovery of a fact or thing, there is no duty on the prosecution to establish the voluntariness of the information. Nevertheless, the trial judge in the instant case had conducted a trial within a trial, not for the purpose of establishing the voluntariness of the information but, for the purpose of determining whether the ingredients of s 27 of the Act had been fulfilled. From this trial, information given by the accused while she was in custody came to light and this information, which was reduced into writing by the arresting officer, led to the recovery of the gold chain belonging to the deceased from a locked cupboard in the accused's house. As such, there was no error or misdirection on the part of the trial judge in admitting that gold chain that was recovered from the discovery as evidence against the accused (see paras 24 & 25).

(3) Based on the totality of evidence adduced in this case, which included the strong circumstantial evidence against the accused, the trial judge was right to conclude that there was a prima facie case that the accused was the perpetrator of the murder as well as the robbery. It is trite law that in a case where murder and robbery form an integral part of a transaction, the recent and unexplained possession of the stolen property is evidence from which a court may draw the inferences that the accused not only committed robbery but also murder. Applying this established test to the present case, there was no doubt that the robbery and the murder were an integral part of the one and the same transaction (see paras 28 & 29).

(4) The defence put up by the accused, which was full of discrepancies, when tested against the totality of the evidence adduced was difficult to believe. Furthermore the defence had not raised any reasonable doubt in the prosecution's case. There was also no explanation by the accused as to how she came into possession of the deceased's gold chain. Based on the evidence tendered by the defence for the accused and testing it against the evidence of the prosecution it was clear that the trial judge had not misdirected himself on the onus of proof of the defence. In fact, the evidence taken as a whole would lead to the irresistible conclusion that it was the accused who committed the crime (see paras 34 & 35).

[Bahasa Malaysia summary

Pada 17 Mei 1998, kira-kira pukul 10 pagi, mayat Soosaimmah a/p Arokiasamy (si mati) telah ditemui oleh suami si mati di atas lantai kedai serbanika mereka berdekatan dengan kaunter juruwang. Adalah didapati juga, RM500–RM600 yang disimpan di dalam kaunter juruwang kedai tersebut telah hilang bersama-sama dengan rantai emas yang dipakai oleh si mati pada pagi sebelum kematiannya. Suami si mati dengan segera memanggil polis untuk memberitahu mereka berkenaan dengan rompakan

dan pembunuhan. Pegawai penyiasat yang tiba di tempat kejadian jenayah telah menjumpai botol asid formic kosong dan pisau yang berlumuran darah di kawasan berdekatan. Selepas pemeriksaan mayat, yang mana berlumuran darah dan berbau asid, beliau mendapati satu luka kelaran di leher. Ahli forensik patologi yang menjalankan post-mortem mayat si mati memberikan kenyataan bahawa pisau yang dijumpai di tempat kejadian jenayah yang menyebabkan kecederaan tersebut. Selanjutnya, beliau menyatakan, kelecuran pada mayat adalah disebabkan oleh si mati terkena dengan asid dari bahagian hadapan. Pada 18 Mei 1988 kira-kira 12.45 pagi tertuduh telah ditangkap di rumahnya. Polis mendapati tanda lecur di bahagian lengan kiri tertuduh dan di bahagian bawah bibirnya. Doktor yang memeriksa tertuduh berpendapat bahawa kecederaan yang didapati pada tertuduh adalah disebabkan terkena asid dan kecederaan tersebut dialami selama kira-kira satu atau dua hari. Semasa dalam tahanan tertuduh telah memberikan maklumat tertentu yang membawa polis kepada penemuan rantai emas yang kemudiannya dikenalpasti oleh suami si mati sebagai kepunyaan si mati. Almari yang mana tersimpannya rantai emas tersebut telah dibuka oleh tertuduh menggunakan kunci yang disangkut pada rantai di lehernya. Tertuduh dan suaminya yang kedua-duanya adalah penoreh getah biasanya pergi bekerja bersama menggunakan motorsikal yang berlainan, tetapi pada hari yang dipersoalkan, walaupun beliau meninggalkan rumah pada masa yang biasa, tertuduh telah tiba di tempat bekerja lewat satu jam atau satu jam setengah menggunakan motorsikalnya sendiri. Beliau menoreh buat seketika dan balik awal dan mengadu bahawa beliau tidak sihat. Pada akhir kes pendakwaan, hakim bicara memutuskan bahawa pihak pendakwaan telah membuktikan kes prima facie terhadap tertuduh dan memanggil tertuduh untuk memasukkan pembelaannya. Tertuduh, yang mana adalah satu-satunya saksi pembelaan, telah menafikan membunuh si mati dan menafikan memberitahu pihak polis bahawa rantai emas kepunyaan si mati adalah dalam milikannya. Hakim bicara telah mendapati bahawa versi tertuduh tidak menimbulkan apa-apa keraguan yang munasabah terhadap kes pendakwaan. Tertuduh telah disabitkan dan hukuman mati mandatori telah dikenakan terhadapnya. Ini adalah rayuan perayu terhadap keputusan tersebut. Perayu di dalam rayuannya telah membangkitkan tiga alasan utama rayuan. Alasan pertama rayuan adalah kelewatan hakim dalam menyediakan penghakiman bertulis telah menyebabkan tertuduh prejudis. Kedua, perayu menghujah bahawa hakim bicara telah terkhilaf dalam menerima keterangan penemuan barang kemas yang dikatakan kepunyaan si mati di bawah s 27 Akta Keterangan 1950 ('Akta tersebut'). Akhir sekali, tertuduh menegaskan bahawa sabitannya adalah tidak selamat dan seharusnya diketepikan, dengan mengambilkira keseluruhan keterangan. Timbalan pendakwa raya menghujahkan bahawa kelewatan membekalkan penghakiman bertulis sahaja tidak secara automatik menyebabkan keputusan hakim bicara adalah cacat atau perlu diketepikan.

Diputuskan, menolak rayuan dan mengekalkan sabitan dan hukuman: A

(1) Walaupun ianya mengambil masa kira-kira lima tahun oleh hakim bicara yang bijaksana untuk membekalkan alasan penghakiman kepada tertuduh, ini tidak seharusnya menyebabkan kerosakan kepada keseluruhan prosiding. Tambahan pula, tertuduh tidak menyediakan B mana-mana bukti prejudis yang ditanggung olehnya disebabkan kelewatan membekalkan alasan penghakiman. Dalam mana-mana kes, dalam pentadbiran keadilan, mahkamah dikehendaki untuk berlaku adil kepada kedua-dua tertuduh dan kepada negara dan masyarakat. Oleh itu dalam kes ini, yang mana tertuduh telah didapati bersalah bagi C jenayah pembunuhan yang serius ianya adalah tidak adil bagi negara dan masyarakat, jika tertuduh diberikan pelepasan tanpa syarat hanya kerana kelewatan dalam membekalkan alasan penghakiman (lihat perenggan 17).

D

(2) Autoriti secara jelasnya telah membuktikan di bawah s 27 Akta tersebut yang menentukan penerimaan apa-apa maklumat yang membawa kepada penemuan fakta atau benda, adalah bukan tugas pendakwaan untuk membuktikan kesukarelaan maklumat tersebut. Walau bagaimanapun, hakim bicara dalam kes ini telah mengendalikan bicara E dalam bicara, bukan untuk tujuan membuktikan kesukarelaan maklumat tetapi bertujuan untuk menentukan sama ada elemen-elemen s 27 Akta tersebut telah pun dipenuhi. Daripada perbicaraan ini, maklumat yang diberikan oleh tertuduh semasa beliau dalam tahanan dapat diketahui dan maklumat ini, yang telah F diturunkan dalam bentuk tulisan oleh pegawai yang menahan, membawa kepada penemuan rantai emas kepunyaan si mati daripada almari yang berkunci di dalam rumah tertuduh. Oleh itu, tidak terdapat kesilapan atau salah arah pada pihak hakim perbicaraan dalam menerima rantai emas yang ditemui daripada penemuan sebagai bukti G terhadap tertuduh (lihat perenggan 24 & 25).

(3) Berdasarkan keseluruhan keterangan yang dikemukakan dalam kes ini, yang termasuk keterangan ikut keadaan yang kuat terhadap tertuduh, hakim bicara adalah betul dalam memutuskan bahawa terdapatnya kes H prima facie yang mana tertuduh adalah orang yang melakukan pembunuhan begitu juga dengan rompakan. Adalah undang-undang yang mantap di dalam kes di mana pembunuhan dan rompakan membentuk bahagian penting daripada satu-satu transaksi, milikan terkini dan yang tidak dapat dijelaskan mengenai harta curi adalah I bukti yang mana mahkamah boleh membuat inferens bahawa tertuduh bukan hanya melakukan rompakan tetapi juga pembunuhan. Menggunapakai ujian yang sudah mantap kepada kes ini, adalah tidak dinafikan bahawa rompakan dan pembunuhan adalah bahagian penting daripada transaksi yang sama (lihat peranggan 28 & 29).

(4) Pembelaan yang dikemukakan oleh tertuduh yang mana adalah penuh dengan percanggahan, apabila diuji terhadap keseluruhan keterangan yang dikemukakan adalah sukar untuk dipercayai. Oleh yang demikian, pembelaan tidak membangkitkan keraguan yang munasabah dalam kes pendakwaan. Tidak terdapat penjelasan oleh tertuduh bagaimana beliau boleh memiliki rantai emas si mati. Berdasarkan kepada bukti yang dikemukakan oleh pembelaan tertuduh dan mengujinya terhadap bukti pendakwaan ianya adalah jelas bahawa hakim bicara tidak tersalah arah dirinya berkenaan dengan tanggungjawab pembuktian pembelaan. Sesungguhnya, keterangan yang diambil secara keseluruhannya akan membawa kepada kesimpulan yang menarik bahawa tertuduh yang melakukan jenayah tersebut (lihat perenggan 34 & 35).]

Notes

For a case on nature of circumstantial evidence, see 7(1) *Mallal's Digest* (4th Ed, 2006 Reissue) para 634

For a case on voluntariness, see 7(1) *Mallal's Digest* (4th Ed, 2006 Reissue) para 122

For cases on discrepancies in evidence, see 7(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1029–1030

For cases on s 302 Penal Code, see 4 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1520–1579

Cases referred to

Chandrasekaran & Ors v PP [1971] 1 MLJ 153 (refd)
Emperor v Sheikh Neamatulla [1913] 17 CWN 1077 (refd)
Francis Anthonysamy v PP [2005] 3 MLJ 389 (refd)
Ganesh Lal v State of Rajasthan [2002] Cr LJ 967 (folld)
Krishna Rao Gurumurthi & Anor v PP & Another Appeal [2007] 4 CLJ 643 (refd)
Pasupathy a/l Kanagasaby v PP [2005] 1 MLJ 493 (refd)
Ramanathan a/l Chelliah v PR [2005] 7 MLJ 469 (refd)
Sogaimuthu Padayachi, Re AIR 1926 Mad 638 (refd)
Tan Hun Wah v PP & another appeal [1994] 1 MLJ 382 (refd)
Voon Chin Fatt v PP [1948–49] MLJ SUPP 131 (refd)
Yusoff bin Kassim v PP [1992] 2 MLJ 183 (refd)

Legislation referred to

Criminal Procedure Code s 113
Evidence Act 1950 s 27

Appeal from: Criminal Trial No 45–11 of 1998 (High Court, Seremban)

Karpal Singh (Ram Karpal Singh with him) (Karpal Singh & Co) for the appellant.

Mangaiarkarsi a/p Krishnan (Deputy Public Prosecutor) (Attorney General's Chambers) for the respondent.

Raus Sharif JCA (delivering judgment of the court):

[1] The accused was convicted for the murder of one Soosaiammah a/p Arokiasamy and was sentenced to death. The charge against the accused reads:

> Bahawa kamu pada 17 Mei 1998, di antara jam 6.50 pagi hingga jam 10 pagi, di Kedai Runcit No 156, Lorong 4, Kampong Gatco, Air Hitam, di dalam Daerah Jempol, di dalam Negeri, Negeri Sembilan telah melakukan pembunuhan dengan menyebabkan kematian SOOSAIAMMAH A/P AROKIASAMY, K/P: 660301-05-5456 dan dengan itu telah melakukan satu kesalahan yang boleh dihukum di bawah s 302 Kanun Keseksaan.

[2] The accused appealed to this court against her conviction and sentence. Having heard arguments of the parties, we adjourned the matter for our consideration and decision. We now give our decision and the reasons for the same.

FACTS

[3] 17 May 1998 was a tragic day for Gabrial a/l S Raju (SP7). On that day, at about 10am, he found his wife's body, Soosaimmah a/p Arokiasamy (the deceased) sprawled on the floor covered in blood at his sundry shop at No 156, Lorong 4, Kampong Gatco, Air Hitam, Jempol. He subsequently found about RM500–RM600, which he kept in the cashier counter of his shop, missing. Also missing was a gold chain that the deceased was wearing that morning.

[4] SP7 immediately called the police. He informed the police that the deceased was robbed and murdered. A number of policemen came to the crime scene. First to arrive were Kpl Mohd Din bin Hj Mohd Diah (SP2) and L/Kpl Md Rodzi Yadi. They arrived at the crime scene at 10.35am. The Investigating Officer, Ketua Inspektor Yong Soun Lian (SP13), together with Inspektor Nor Azlinda bte Nordin (SP15) and a police photographer L/Kpl Sahaimi Mohamad (SP3) arrived at about 11.20am.

[5] At the crime scene, SP13 found the deceased body lying on the floor near the cashier counter. The body was covered in blood and smelled of acid. Upon examination of the body, he found a slash wound at its neck. SP13 recovered an empty formic acid bottle at the vegetable rack and a knife (P19B) with blood stain. SP13 also recovered a few broken leg potions of a

stool and a broken seat of a stool. Also recovered was an identification card belonging to Shamsuri bin Hashim (SP6) on the cashier counter. SP6 was arrested and later released as the investigation confirmed that he was not involved in the commission of the crime.

[6] A post-mortem on the deceased body was conducted at Kuala Pilah General Hospital by Dr Zahari bin Noor (SP9) a forensic pathologist attached to Kuala Lumpur General Hospital. According to SP9, the deceased had numerous injuries including scalding on the head, face, chest and hands. But SP9 was of the opinion that the cause of death of the deceased was due to a slash wound at the right side of her neck which had severed off the sterna mastoid muscle and carotid artery vein and caused massive bleeding. SP9 testified that the knife (P19B) recovered at the scene of crime, could cause the injury. SP9 also testified that the deceased had some defensive wounds. He attributed the scalding on the body ie, head, face, chest and hands of the deceased due to the deceased coming into contact with acid from the front direction.

[7] The accused was arrested by K/Insp Lee Kwi Lin (SP12) on 18 May 1998 at about 12.45am, at her house at No 130, Lorong 5, Kampong Gatco. Her house is about 500 meters from the crime scene. The police found scalding marks on the accused left arm and lower part of her lips. At about 11am on the same day the accused was examined by Dr Sandra Krishnan (SP14). SP14 was of the opinion that the injuries as found on the accused were consistent of coming into contact with acid and that injuries were one or two days old.

[8] While in custody, the accused gave certain information to the police. At about 5.15pm on 18 May 1998 she led the police to the recovery of the gold chain (P40) and lockets (P44A-F) in a cupboard of her house. The cupboard was initially locked and was opened by the accused by using a key which she wears to her chain around her neck. P40 was subsequently identified by SP7 to be the gold chain belonging to the deceased.

[9] The accused lived with her husband Durairaj a/l Kolandaveloo (SP10) and their children. They were rubber tappers. Normally, they would go to tap rubber together but in separate motorcycles. SP10 would use Honda Cub 80 bearing the plate No NJR 6230 and the accused used a red Yamaha No WD 2480. But, on the day in question, SP10 went to work alone riding his Honda Cub. He left the house at 5.30am. The accused came later, between 6.30am to 7am using the red Yamaha motorcycle. She tapped for a while and left the rubber plantation at about 9.30am as she was complaining to SP10 that she was not well.

[10] At the end of the prosecution's case, the learned trial judge ruled that the prosecution had proved a prima facie case against the accused and called upon the accused to enter her defence. The accused gave evidence on oath. She was the only witness for the defence. In her evidence she denied murdering the deceased. She also denied informing the police that the gold chain (P40) belonging to the deceased, was in her possession.

[11] The learned trial judge rejected the accused's defence. He also found that the accused's version had not raised any reasonable doubt against the prosecution's case. He convicted the accused and the mandatory death sentence was imposed on her.

ISSUES

[12] Before us, learned counsel for the accused raised three main grounds in support of this appeal. His first ground was that there was a delay on the part of the learned trial judge in providing his written judgment. He submitted that the inordinate and unexplained delay in the supply of the grounds of judgment has caused the accused prejudice. Secondly, the learned trial judge was wrong in accepting the evidence of recovery of the jewellery purportedly belonging to the deceased under s 27 of the Evidence Act 1950. And thirdly, having regard to the totality of evidence, the accused's conviction is unsafe and should be set aside.

FINDINGS

(i) *Delay in providing written judgment*

[13] There is no dispute that there was a delay on the part of the trial judge in providing his written judgment. In this case the trial proper commenced on 25 January 2000 and concluded on 8 November 2002. The grounds of judgment were only supplied to the accused on 5 December 2007.

[14] Learned counsel for the accused submitted that the long delay in supplying the grounds of judgment has caused the accused prejudice on the basis that there was every likelihood not only that the trial judge's impression on the demeanour of witnesses would be blurred, but also the delay would increase the chances of omission on the part of the learned trial judge to deal with material facts and issues in the grounds of judgment, which ought to have been favourable to the accused. In support, learned counsel cited the following cases and urged the court to release the accused forthwith. *Voon Chin Fatt v Public Prosecutor* [1948–1949] MLJ SUPP 131; *Yusoff bin Kassim v Public Prosecutor* [1992] 2 MLJ 183; *Tan Hun Wah v Public Prosecutor and*

another appeal [1994] 1 MLJ 382; *Pasupathy a/l Kanagasaby v Public Prosecutor* [2005] 1 MLJ 493; and *Ramanathan a/l Chelliah v Pendakwa Raya* [2005] 7 MLJ 469.

[15] On this issue, we are in agreement with the submission of the learned deputy public prosecutor that the delay per se in supplying the written judgment on the part of the learned trial judge does not automatically render the decision of the learned trial judge to be vitiated or set aside. An important case in this issue is the decision of the Supreme Court in *Tan Hun Wah v Public Prosecutor and another appeal*. In that case, the accused were jointly charged for the offence of trafficking in raw opium. They were found guilty and sentenced to death by the High Court. The trial proper commenced on 24 January 1988 and concluded on 30 October 1988. The grounds of judgment were supplied to the accused only sometime in the month of February 1992. There was a delay of about four years in supplying the grounds of judgment.

[16] The issue of delay in the trial and also in providing for the written judgment was incorporated into the petition of appeal and brought to the attention of the Supreme Court by learned counsel at the very outset of the appeal. Mohamad Azmi SCJ, speaking for the Supreme Court was highly critical of the delays both in the trial process and in providing the written judgment but went on to explain that:

> There are however many causes of delay in court proceedings, and the delay itself can take the form of an abuse of process or may appear in various forms of prejudice or unfairness. This principle that 'justice delayed is justice denied' is of general application, and it does not follow that every form of delay, though frowned upon by the courts, should result in vitiating the whole proceedings.

[17] We adopt the principle as enunciated by the Supreme Court. In the present case, it took the learned trial judge about five years to supply the grounds of judgment to the accused. It is regrettable, but we are of the same view with the Supreme Court that it should not necessary result in vitiating the whole proceedings. This is more so when it is not shown to us through the notes of evidence that the appellant has suffered prejudice as the result of the delay in supplying the grounds of judgment to the accused. Further, we hold the view that in the administration of justice, the courts must be fair not only to the accused person, but must also be fair to the State and society. It would not be fair to the State and society whose penal law are made and administered, if the accused is given an outright acquittal just because of the delay in supplying the grounds of judgment. This is especially so when the accused has been found guilty of a serious crime of murder. We, therefore hold that this appeal must be heard on its merits.

(ii) *Discovery statement under s 27 of the Evidence Act 1950*

[18] In this case, the accused upon her arrest on 18 May 1998 was questioned by Ketua Inspektor Lee Kui Lin (SP12). During the questioning, the accused informed SP12 certain information which was reduced by SP12 into writing. The information was admitted at the trial and marked as exh P51. It reads:

> Encik, rantai leher emas yang saya ambil daripada perempuan itu ada saya simpan di rumah saya di No 130, Jalan 5, NUPW Gatco, Air Hitam …

[19] The accused then brought the police party to her house. At her house, the accused opened a locked cupboard in her room. She opened the locked cupboard by using a key which she wears to her chain around her neck. After unlocking the cupboard, she took out a green blouse and in its pocket, she took out a folded blue handkerchief whereby a gold chain and some lockets were kept.

[20] The learned trial judge conducted a trial within a trial before admitting P51. In admitting P51 the learned trial judge said:

> … Ia diterima masuk setelah saya perhatikan ia memenuhi empat (4) syarat iaitu OYDT berada di dalam tahanan polis semasa maklumat diberikan, fakta diperolehi sebagai akibat maklumat yang diberikan oleh OYDT, maklumat itu adalah berkaitan dengan fakta yang diperolehi dan fakta itu adalah fakta yang relevan yang berkaitan dengan perlakuan jenayah.

[21] Learned counsel for the accused argued that the learned trial judge ought not to have admitted P51 under s 27 of the Evidence Act 1950. This is because the prosecution, in the trial within the trial through the evidence of Ketua Inspektor Lee Kui Lin (TW1) proceeded on the basis of recording a statement under s 113 of the Criminal Procedure Code. Thus, it cannot then be admitted as evidence under s 27 of the Evidence Act 1950.

[22] The way s 27 of the Evidence Act 1950 should be approached has been fairly worked out in many cases. In *Francis Anthonysamy v Public Prosecutor* [2005] 3 MLJ 389, the Federal Court after considering a long line of authorities, held at p 404 that:

> In our opinion it is illogical to suggest that s 27 is subject to the voluntariness rule in s 24. If that were to be so the desired evidence can be admitted under s 24 without there being any need for s 27. The fact that s 27 has been specifically enacted is therefore a clear indication that it has a purpose of its own to serve. As it applies only to a restricted and specified type of evidence as opposed to s 24 it can only mean that it is an independent provision which is unaffected by s 24, or,

A for that matter, any other statutory provision regulating the manner of taking or recording statements from any person …

… Since voluntariness is not a condition of admissibility of information supplied under s 27 the privilege against self-incrimination which is manifested in an involuntary statement or in a statement made in breach of the requirements of B s 112 must be deemed to have been impliedly abrogated insofar as s 27 is concerned. It follows that the argument of learned counsel that s 27 is subject to the voluntariness rule in s 24 and the privilege against self-incrimination in s 112 cannot be sustained.

C

[23] In fact, as early as in 1971, Raja Azlan Shah J (as his Royal Highness then was) in *Chandrasekaran & Ors v Public Prosecutor* [1971] 1 MLJ 153, has this to say on s 27. At p 158 he said:

D Section 27 is a concession to the prosecution. It is the express intention of the legislature that, even though such a statement is otherwise hit by the three preceding sections, viz ss 24–26 of the Evidence Ordinance, any portion thereof is nevertheless admissible in evidence if it leads to the discovery of a relevant fact. The reason is that, since the discovery itself provides the acid test, the truth of the E statement that led to the discovery is thereby guaranteed. Admissibility of evidence under s 27 is in no way related to the making of the confession; rather, such evidence is admitted on clear grounds of relevancy as directly connecting the accused with the object recovered …

F

[24] From the above authorities, it is clear that for information leading to discovery of a fact or thing to be admissible under s 27 of the Evidence Act 1950, there is no duty on the prosecution to establish the voluntariness of the information. In the present case, no doubt a trial within a trial was conducted G by the learned trial judge (which in fact is not necessary), it appears from the record that it was not for the purpose of establishing the voluntariness of the information. It was for the purpose of determining whether the ingredients of s 27 of the Evidence Act 1950 had been fulfilled.

H

[25] In this case, the learned trial judge found all the ingredient of s 27 had been fulfilled. We are in agreement with him. Clearly, the accused gave the information while she was in custody. The information was given to SP12. It was reduced into writing (P51) by SP12. The learned trial judge accepted I the evidence of SP12. In fact P51 lent credence to the oral evidence of SP12. These evidences are relevant as it directly connected the accused to the gold chain (P40) recovered from a locked cupboard at her house. Accordingly, we find no error on the part of the learned trial judge in admitting P51 as evidence against the accused.

(iii) *Is the conviction of the accused safe?*

[26] Learned counsel for the accused submitted that the accused's conviction is unsafe and should be set-aside. He relied on two grounds. First, the learned trial judge was wrong in calling for the accused to enter for her defence. Second, the learned trial judge has misdirected seriously in law on the onus of proof on the defence.

[27] In respect of the first question it is pertinent to look again at the evidence adduced during the prosecution's case.

(a) SP7 testified that on 17 May 1998 the deceased was wearing her gold chain (P40) when she left the house in the morning. But when he found her body later that morning, P40 was missing. P40 was recovered from the accused's locked cupboard at about 5.15pm on 18 May 1998. The key to the cupboard was in the possession of the accused. SP10, the accused husband confirmed that the key to the cupboard had always been with the accused. He also testified that he has never seen P40 before.

(b) SP11, at about 7am on 17 May 1998, saw a red Yamaha motorcycle parked outside the shop. SP10 confirmed that the accused used a red Yamaha motorcycle to go to work. SP10 in his evidence testified that on the day in question, the accused came to work on her own using the red Yamaha motorcycle and only arrived at her work place about 6.30am to 7am.

(c) An empty formic acid bottle was also found at the crime scene. SP9, the pathologist testified that there was burnt marks by acid on the deceased clothes and body especially on her face, hair, chest and both her arms. SP2, SP7 and SP13 testified that the deceased body smelled of acid. Related to this fact is the evidence of:

    (i) SP13, who met the accused at the crime scene, at about 12.30pm. on 17 May 1998 saw injuries at the lower part of the accused's lips and left arm.

    (ii) SP14, the doctor who examined the accused on 18 May 1998, at about 11am found injuries at the lower part of her lips and her left arm. According to SP14, the injuries were consistent of coming into contact with acid and that the injuries were of one or two days old.

[28] Based on the evidence adduced as mentioned above, there is a strong circumstantial evidence for the learned trial judge to conclude that there is a prima facie case that the accused was the perpetrator of the murder as well as the robbery. It is a trite law that in a case where murder and robbery form an

integral part of a transaction, the recent and unexplained possession of the stolen property is evidence from which a court may draw the inferences that the accused not only committed robbery but also murder, (see *Emperor v Sheikh Neamatulla* [1913] 17 CWN 1077, *Re Sogaimuthu Padayachi* AIR 1926 Mad 638 and *Ganesh Lal v State of Rajasthan* [2002] Cr LJ 967. In *Ganesh Lal*'s case, Lahoti J (later CJ) held that to enable such presumption to be drawn against an accused person the following test must be satisfied:

(i) The offence of criminal misappropriation, theft or robbery relating to the articles recovered from possession of the accused and such offence can reasonably be held to have been committed as an integral part of the same transaction;

(ii) The time-lag between the date of recovery of articles from the accused is not wide as to snap the link between recovery and commission of the offence;

(iii) Availability of some piece of incriminating evidence or circumstances, other than mere recovery of articles, connecting the accused with such other offence;

(iv) Caution on the part of the court to see that suspicion, however strong, does not take the place of proof. In such cases, the explanation offered by the accused for his possession of the stole property assumes significance.

[29] The tests adopted by Lahoti J was accepted with approval by this court in *Krishna Rao Gurumurthi & Anor v Public Prosecutor & Another Appeal* [2007] 4 CLJ 643. Applying the same test to the present case, there is no doubt that the robbery and the murder were an integral part of one and the same transaction. The recovery of P40 belonging to the deceased from the accused was almost immediate. And above all, as demonstrated earlier, there are some other pieces of incriminating evidence or circumstances, connecting the accused with the offence. Hence, the learned trial judge was not wrong to rule that the prosecution had proved a prima facie case against the accused.

[30] On the issue of whether the learned trial judge has misdirected himself on the onus of proof on the defence, it is again necessary to examine the defence put forward by the accused. In this case, accused was the only witness for the defence. She gave her evidence on oath. She testified that on 17 May 1998 at about 7am she went to the deceased's shop on a motorcycle to buy petrol. As she entered the shop, she saw a Malay male strangling the deceased using a rope. Upon seeing the incident, she ran out of the shop but was stopped at the entrance by another Malay male who held her by the shoulder and punched her left lips. The man then splashed acid on her. As a result she got burnt on her left lips and left arm. According to her, she managed to free

herself from the man and went straight to work to join her husband to tap rubber. At about 8.30am to 9am, she went home with her husband. She testified that she did tell her husband about the incident at the shop and her husband told her not to tell anyone about it.

[31] The accused further testified that she was arrested on 18 May 1998 at about 10am. On 19 May 1998, a police team took her to her house. There, she entered her room and opened her cupboard to take her clothes. At that time, SP12 took out a gold chain from the cupboard and asked her to hold the gold chain. A photograph of her standing beside the cupboard holding the gold chain was taken by the police. The accused concluded her testimony by stating that she did not kill the deceased and she had never at any time informed any police officer that the gold chain (P40) was in her possession.

[32] The learned trial judge in his ground of judgment dealt at length on the evidence of the accused. He tested it against the evidence adduced by the prosecution. At the end of it, he rejected the accused's evidence. He did not believe the accused's story. He also found that the defence has failed to raise a reasonable doubt against the prosecution's case.

[33] It is not surprising for the learned trial judge to arrive at the said decision. There are many discrepancies in the defence story. Here are some of them. First, the accused during cross-examination testified that she had told her husband (SP10) about the incident in the deceased's shop and SP10 in turn told her not to tell anyone about it. However, SP10 did not mention it and he was not cross-examined at all. Secondly, the appellant claimed that she saw two male Malays at the shop, one of them was strangling the deceased with a rope but the pathologist's evidence does not disclose any strangulation marks on the deceased. Thirdly, the accused during cross-examination denied that she met SP13 at the scene of the crime on 17 May 1998 at about 12.30pm and told him about the incident that she witness in the shop earlier that morning. But SP13 was never cross-examined on this point. Fourthly, the accused testified that it was SP12 who took out the chain and asked her to hold it for photograph to be taken. Yet SP12 was never cross-examined on this point. Fifthly, the accused claimed that she told SP14 that a Malay male had attacked her and splashed acid on her but SP14 testified that the accused never told her who splashed the acid on her.

[34] Like the learned trial judge, we are also of the view that the defence put up by the accused when tested against the totality of the evidence adduced is difficult to believe. The defence had not raised any reasonable doubt in the prosecution's case. There was no explanation by the accused as to how she came into possession of the deceased's gold chain.

A **[35]** Thus, taking the evidence as a whole, we are of the view that the conviction of the accused was not only supported by the recovery of the deceased's gold chain from the accused after the deceased was murdered which remain unexplained, but by strong circumstantial evidence, adding them together, which lead to the irresistible conclusion that it was the accused
B who committed the crime.

[36] Before concluding, we wish to point out that the accused in the petition of appeal had raised the issue on the rejection by the learned trial judge of the defence's application to recall and cross-examine SP10. It was
C made at the close of the defence's case. However, this issue was abandoned by learned counsel during the hearing before us. Thus, we are not making any ruling on this issue.

[37] In conclusion, having read the record and after carefully scrutinised
D through the notes of evidence and the grounds of judgment, we are unable to hold that the decision of the learned trial judge was not justifiable. We have no doubt that it was the accused who murdered the deceased. The conviction is safe. Hence, we are unanimous that this appeal be dismissed. The conviction and sentence are affirmed.
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Appeal dismissed.

Reported by K Nesan

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